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Note verbale dated 28 October 2004 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Austria to the United Nations presents its compliments to the Chairman of the Committee, and has the honour to transmit herewith Austria's first national report on the implementation of Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 28 October 2004 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Committee

Austrian national report on the implementation of Security Council resolution 1540 (2004)

1. The unanimous adoption of United Nations Security Council Resolution 1540 (2004) on 28 April 2004 was an important event, as the Security Council addressed the threat that proliferation of weapons of mass destruction and their means of delivery, in particular by non-state actors, poses to international peace and security.

2. Austria has taken a range of legislative and executive measures that ensure compliance with UNSCR 1540. Austria's policies are under continuous review and further measures will be adopted if necessary.

3. Austria is also fully committed to the work of the 1540 Committee in ensuring global implementation of this resolution, including — where possible — through providing assistance or advice to others.

Legislative action

4. Austria has a wide range of legislative measures in place to prevent the proliferation of WMD, including by non-state actors. The centrepieces of this legislative framework are the Austrian Penal Code, the 1991 Nuclear Non proliferation Act, the 1995 Foreign Trade Act and the Foreign Trade Decree, the 1977 War Material Act, amended in 2001, and the Austrian Penal Code. This national legislation in conjunction with the relevant international treaties (Chemical Weapons Convention, Biological and Toxin Weapons Convention, Nuclear Non Proliferation Treaty) ratified by Austria and the export control regimes (Zangger Committee, Nuclear Supplier Group, Australia Group, Missile Technology Control Regime, Wassenaar Arrangement) provide the legal framework for the implementation of SC Res 1540 in Austria.

5. The legal framework for the enforcement of Austria's nuclear non-proliferation commitments is established through the Austrian Nuclear Non-Proliferation Act ("Sicherheitskontrollgesetz"), first issued in 1972, amended in 1976 to cover physical protection and re-issued in 1991 after thorough revision. This act establishes the Austrian national system of nuclear security (safeguards, physical protection and export controls) and covers nuclear material as well as equipment and material especially designed or prepared for the processing, use or production of special fissionable material, as required by Art. III of the NPT.

6. The export of nuclear related dual-use items (i.e. items that are not specifically designed or prepared for the use in nuclear fuel cycle activities but can make a significant contribution to such activities) is regulated in the Foreign Trade Act (AuRenhandelsgesetz) of 1995 as amended.

7. Detailed responses as to how Austria's legislative framework relates to specific issues raised in UNSCR 1540 are set out below.

Enforcement action

8. Action to enforce export controls is carried out by Austrian customs by means of risk-based, ex - post controls of exported goods and exporters. The import and export data are stored in a corresponding EDP-data base enabling an efficient analysis of risk profiles with the shipment completion/customs clearance data.

9. Besides the custom service, two units within the Austrian Finance ministry assume responsibility for preventing the import and export of unlicensed goods and investigating offences: the department to combat fraud and the centre for risk analysis.

Encouraging compliance

10. To complement the enforcement effort, the Ministry for Economics and Labour undertakes regular compliance visits to Austrian exporters to ensure that they understand the relevant export controls and are operating within the terms of their licences.

In the European Union

11. The present report is complemented by the report submitted by the European Union. Especially in the fields of safeguards (nuclear material accountancy and control) and export controls of dual-use items the European Community holds important competencies, and the Community rules and regulations are presented in detail in the EU report. In the overall context of Non-Proliferation the European Union has developed a number of common approaches which are also described in the EU report.

12. To complement the enforcement effort the undertakes regular seminars to Austrian Exporters to ensure that they understand the relevant export controls and are operating within the terms of their licences. According to the Austrian Foreign Trade Act in addition the issuing of a license may depend on the nomination of a person responsible for export control matters at the exporter.

13. As a Member of the European Union, Austria fully supports the EU Strategy against the Proliferation of Weapons of Mass Destruction, part of the European Security Strategy "A Secure Europe in a Better World", which were both adopted on 12 December 2003 by the European Council, and implements the concrete steps of the correspondent EU Action Plan. The elements of the Strategy are the strengthening of the international system of non-proliferation, the pursuance of the universalization of multilateral agreements and arrangements, the reinforcement of strict implementation and compliance with these agreements and arrangements, close co-operation with partners and assistance to third countries.

International instruments

14. Austria is party to all relevant international conventions and treaties regarding the non-proliferation of weapons of mass destruction. Thus, Austria has signed and ratified:

- the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),
- the Comprehensive Nuclear-Test-Ban Treaty (CTBT),
- the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC),
- the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction(CWC).

15. On the basis of the Treaty on the Non-Proliferation of Nuclear Weapons, Austria has concluded a Safeguards Agreement and an Additional Protocol to it with the International Atomic Energy Agency. The Additional Protocol entered into force for all EU member states on 30 April 2004. Austria as a State Party to the Convention on the Physical Protection of Nuclear Material contributes to the initiative to amend this Convention in order to oblige States Parties to establish a comprehensive national security system.

16. Austria is a member of all existing multilateral weapons and technology export control regimes: Zangger Committee, Nuclear Suppliers Group (NSG), the Australia Group, Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement. The export control regimes play an important role in agreeing control lists and raising international standards of export controls.

17. The Zangger Committee has been involved since 1971 in the drafting of policy guidelines for the supply of nuclear material and equipment or material especially designed or prepared for the processing, use or production of special fissionable material. It meets regularly in Vienna, Austria. Dr. Fritz W. Schmidt,

director for nuclear non-proliferation in the Austrian Federal Ministry for Economy and Labour, has been Chairman of the Zangger Committee since 1993.

18. Austria is a signatory to the Hague Code of Conduct Against the Proliferation of Ballistic Missiles (HCOC). Austria also serves as the Immediate Central Contact which acts as the Secretariat of the HCOC. A resolution regarding the HCOC with the aim of integrating this politically binding instrument in the United Nations was tabled at this year's UN General Assembly.

19. Since September 2001, Nuclear Suppliers Group (NSG), the Australia Group, the Missile Technology Control Regime (MTCR), and the Wassenaar Arrangement have all adopted catch-all provisions and 'terrorism clauses'.

20. Austria encourages all states to align themselves with the purposes and instruments of these groupings.

Technical Assistance to Other States

21. Austria recognises that states lacking the legal and regulatory infrastructure, implementation experience and/or resources needed to fulfil the provisions of UNSCR 1540 may require assistance in implementing the provisions of this resolution nationally.

22. In the framework of the IAEA, Austria, together with the IAEA Secretariat as well as with other IAEA Member States, is currently exploring possibilities how to provide assistance to these states in the most appropriate way, taking into account that requests for assistance are in some cases directed to the IAEA.

23. Austria has provided assistance to a number of countries, in particular to Croatia, Slovenia, and Slovakia, with regard to the further strengthening of their export control systems.

Comments in relation to the specific issues raised posed by UNSCR 1540:

Operative Paragraph 1

Decides, that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery

Austrian legislation and executive actions are carried out in such a way as to prevent any development, acquisition, manufacture, possession, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery. Any such support is penalized by Austrian law. Appropriate Austrian legislation is detailed below.

Operative Paragraph 2

Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

Obligations under CWC and BWC are fully enacted in the Austrian Penal Code which establishes the offence of assisting, developing, trafficking of weapons of mass destruction. Maximum penalty is life imprisonment

Foreign Trade Act 1995 section 17 establishes the offence to export dual use goods and weapons (including goods that might be used for WMD). Maximum penalty is 5 years imprisonment.

Action taken:

- Obligations under NPT, CWC and BTWC are fully enacted in Austrian law.
- Section 177a of the Criminal Code establishes the offence of production, processing, development, import, export, transit, acquisition, possession, relinquishment or procurement of nuclear, chemical or biological weapons or their means of delivery. Maximum penalty is life imprisonment.
- The attempt, participation, assistance or financing of above are criminal offences.
- Section 64, para. 4b of the Criminal Code provides for extraterritorial application of above to Austrian persons acting overseas.

Planned action:

- The existing provisions are reviewed whenever appropriate.

Operative Paragraph 3

Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

Action taken:

- Austria is a member of the European Union (EU) and thus party to the Treaty Establishing the European Atomic Energy Community (EURATOM), chapter VII of which concerns nuclear safeguards. These safeguards are implemented by the European Commission, which is tasked under the Treaty with satisfying itself that nuclear material in Austria is not diverted from declared uses. The detailed requirements for nuclear material accountancy and control are set out in a Regulation made by the Commission and approved by the Council (currently Commission Regulation (Euratom) No. 3227/76), which acts directly in Austria. European Commission inspectors are given access to all places, data and persons in Austria to the extent necessary to verify that Austria is compliant with the non-diversion provision.
- Austria is party to the Safeguards Agreement between the non-nuclear weapon States of the European Union, the European Atomic Energy Community (EURATOM) and the International Atomic Energy Agency (IAEA). This agreement is a so-called "comprehensive safeguards agreement", based on IAEA document INFCIRC/153, which was developed in 1970 for all non-nuclear weapon States party to the NPT to fulfil the requirement of Art. III.1 of this Treaty. An Additional Protocol to this agreement, based on the model set out in IAEA document INFCIRC/540, came into force on 30 April 2004. It is aimed at improving the IAEA's ability to detect undeclared nuclear activities in the EU non-nuclear weapon states, by providing the IAEA with more information on the nuclear programmes of the States as well as additional access rights.

  Austrian accountancy reports for nuclear material are submitted to the European Commission, which is responsible for verifying these reports as well as for providing them to the IAEA. Reports required under the Additional Protocol which do not relate to nuclear material information (e.g., imports, exports or production of sensitive items, research and development activities) are provided directly by the Austrian safeguards authority to the IAEA. The Nuclear Non-Proliferation Act provides the Federal Ministry for Economy and Labour with the requisite powers for the collection of information. The IAEA has access to all nuclear material in Austria as well as to other locations identified in accordance with the Additional Protocol for purposes of its safeguards inspections.

Planned action:

- The existing provisions are reviewed whenever appropriate.
- A new Foreign Trade Act will enter into force in early 2005. It will inter alia further strengthen the control on weapons as well as dual use goods and also further strengthen the prevention of their proliferation.

(b) Develop and maintain appropriate effective physical protection measures;

Action taken:

- Part 3 of the Nuclear Non-Proliferation Act contains provisions on the physical protection of nuclear material. A license, issued by the Federal Ministry of the Interior, is in particular required for the handling of special fissionable material (plutonium and enriched uranium). Physical protection levels are based on the IAEA guidelines and recommendations for the physical protection of nuclear material and nuclear facilities, published in IAEA document INFCIRC/225 as revised.
- Austria is a party to the Convention on the Physical Protection of Nuclear Material (CPPNM). It has strongly supported recent efforts to strengthen this Convention to cover domestic use, storage and transport as well as sabotage of nuclear material and nuclear facilities. The Austrian Foreign Minister on behalf of 25 States parties has sent a letter to the IAEA Director General (the Depositary of the Convention), proposing a set of amendments and requesting the holding of a diplomatic conference according to Article 20 of the CPPNM.

Planned action:

- Austria is considering what further action may be necessary.

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

Action taken:

- Export control measures are carried out in compliance with the provisions of the EU Dual —Use Regulation by means of export licenses. The responsible agency for administering export controls on strategic goods is the Federal Ministry for Economic Affairs and Labour. The Federal Ministry of the Interior is the licensing authority for the import, export and transit of war material.
- The brokering of dual-use items is subject to a licence under the Foreign Trade Decree.
- An Advisory Board established under the Austrian Foreign Trade Act is consulted before granting an export permit, including catch-all. Representatives of this board are members of the Ministries for Foreign Affairs, Interior and Defence, which supply information mostly on the end-user, the scope of business of the end-user and the plausibility of the stated end-use.
- As far as nuclear material is concerned, combatting illicit trafficking is internationally understood as comprising three steps: prevention, detection and response. The first step, prevention, is the most effective and the most important one. The relevant measures of physical protection are described under section b) above.
- Since illicit trafficking has become an issue of international political as well as technical concern, international co-operation plays an important part in combating illicit trafficking. Austria has been participating in the reporting system of the IAEA illicit trafficking database and other relevant activities in the framework of this organisation. The Federal Ministry for Economic Affairs and Labour (Division for Nuclear Non-Proliferation) serves as contact point to the international system and as national co-ordinator between relevant authorities on Federal and Regional level within Austria.

Planned action:

- Increased cooperation between licensing authorities and enforcement authorities

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations

Action taken:

- As Austria is a Member State of the European Union, the Dual-Use Regulation (EC) 1334/2000, applies in Austria.
- The Nuclear Non-Proliferation Act contains detailed provisions for the licensing of exports of nuclear material as well as equipment or material especially designed or prepared for the processing, use or production of special fissionable material. These provisions comply with the requirements set up by the NPT (Art. 111.2) and by the nuclear export control regimes Zangger Committee and Nuclear Suppliers Group. In particular they provide for the following criteria to be met before a license is issued:
  - peaceful and non-explosive use assurance.
  - safeguards, understood as requiring the last state of the art of the safeguards system set up by the IAEA for NPT purposes; i.e., for the time being, a comprehensive safeguards agreement with the IAEA. In this context, Austria fully supports current efforts to make the Additional Protocol an internationally recognised condition of supply.
  - physical protection.
  - re-export requires the same conditions to be met by the third country.
  - The Austrian export control authority requires the recipient government to guarantee these conditions in an explicit declaration, the so-called "Government-to-Government Assurance".
- Detailed export control provisions for nuclear related and other WMD-related dual use items are laid down in the Foreign Trade Act.
- Section § 1 77b of the Criminal Code establishes the offence of storage, transport, processing, use, import, export and transit of nuclear material, dangerous radioactive substances, and equipment or material especially designed or prepared for the processing, use or production of special fissionable material in violation of the relevant legal provisions. Maximum penalty is, under certain aggravating conditions, life imprisonment.

Planned action:

- The existing provisions are reviewed whenever appropriate.

Operative Paragraph 5

Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons.

Austria is a State Party to the Nuclear Non-Proliferation Treaty (NPT), the Chemical Weapons Convention (CWC), and the Biological and Toxin Weapons Convention (BTWC). Austria is also a member of the IAEA and OPCW, and actively participates in the continuing efforts to strengthen the implementation of the BTWC.

Operative Paragraph 6

Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.

Action taken:

- Austria supports effective multilateral export control regimes and contributes to universalising international standards. Austria is a member of the Zangger Committee, Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime, and the Wassenaar Arrangement. The permanently up-dated control lists agreed by these regimes are incorporated into the Annexes of the EU dual-use regulation, which is directly applicable in Austria.

Planned action:

- Austria has an ongoing outreach programme in cooperation with partners and the respective chairs of the export control regimes.
- These activities are undertaken in a transparent manner with a view to solicit the cooperation of interested countries.

Operative Paragraph 7

Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions.

Austria recognises that states lacking the legal and regulatory infrastructure, implementation experience and/or resources needed to fulfil the provisions of UNSCR 1540 may require assistance in implementing the provisions of this resolution nationally.

Austria is responding to States' requests for assistance and cooperation in implementing the provisions of this resolution.

Appropriate assistance is provided in response to specific requests taking into account the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the provisions of this resolution.

In the nuclear field, requests for assistance are occasionally also directed to the IAEA. As an active member of the Agency, as well as of the nuclear export control regimes Zangger Committee and Nuclear Suppliers Group, Austria, together with other countries, is exploring possibilities how to provide assistance as appropriate to these states.

In the chemical area, requests for assistance in case of chemical weapons threats and / or of alleged use of chemical weapons are also directed to the OPCW. In this respect, Austria has offered assistance by the Austrian Armed Forces Disaster Relief Unit (AFDRU).

Operative Paragraph 8

Calls upon all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

Action taken:

- EU Common Position, November 2003, on the universalisation of the main multilateral non-proliferation agreements (CWC, BTWC, NPT).

- Model non-proliferation clause in EU-third country mixed agreements.

- Lobbying for non-state parties to join multilateral treaties, in order to achieve their universal application.

- Austria is working actively in all relevant fora towards the acceptance of the Additional Protocol to IAEA comprehensive safeguards agreements as a necessary means of improving the IAEA safeguards system for NPT purposes. One important means of furthering the universality of the Additional Protocol is making it a condition of nuclear supply.

- Austria participates actively in the strengthened review process of the NPT. In the 2000 NPT Review Conference, an informal group dealing with the export control requirements of the Treaty was chaired by Dr. Fritz Schmidt of Austria, Chairman of the Zangger Committee. The Zangger Committee has set up guidelines for nuclear export controls in accordance with the export control requirements of the NPT. These "understandings" should serve as guidance for all states party to the NPT in fulfilling their export control obligations under the Treaty. It is therefore an important element of Austrian nuclear non-proliferation policy to ensure continued acceptance of the Zangger Committee as "faithful interpreter" of the NPT export control requirements.

Planned action:

- Austria will continue to promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties and arrangements whose aim is to prevent the proliferation of nuclear, biological or chemical weapons and their means of delivery.

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

Action taken:

- Nuclear-related offences and actions in contravention of the Chemical Weapons Convention or the Biological Toxin Weapons Convention are covered by the Austrian Penal Code, the Nuclear Non-Proliferation Act and the Austrian Foreign Trade Act.

Planned action:

- Austria is fully compliant with her commitments under the key multilateral non proliferation treaties. No further action is currently foreseen.

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

Action taken:

- Austria is fully committed to international co-operation under the auspices of the IAEA in the areas of non-proliferation as well as peaceful uses of nuclear energy as well as in the framework of the OPCW.

Planned action:

- No further action is currently foreseen.

(d) To develop appropriate ways to work with and in form industry and the public regarding their obligations under such laws;

Action taken:

- Close working relationship with industry, established through a governmental industry awareness programme to provide advice and assistance to industry and academia in meeting their obligations under all laws pertaining to non-proliferation
- Information disseminated through Ministry for Economic Affairs and Labour website, publications and leaflets
- EU WMD Strategy

Planned action:

- Austria is considering what further action may be necessary.

Operative Paragraph 9

Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery

Austria is the host country for a number of arms control and non-proliferation organizations and activities (IAEA, CTBTO, Zangger Committee, Nuclear Suppliers Group Point of Contact, Wassenaar Arrangement, Secretariat of the HCOC). As seat of these organizations Austria bears a particular responsibility to support these organizations and activities in order to enable them to carry out their tasks in a comprehensive and efficient manner.

Operative Paragraph 10

Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

Action taken:

- Austria supports the Proliferation Security Initiative (PSI) and has participated in several exercises in the PSI framework.
- As a member of all export control regimes, Austria participates in the respective Licensing and Enforcement Expert meetings, which are aimed at sharing lessons learned and identifying best practices.

Planned action:

- Cooperative action is in Austria's opinion a prerequisite for implementing efficiently UNSCR 1540. The enhancement of this action globally, within the EU, regionally and bilaterally is under continuous scrutiny by the relevant authorities.